

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Charlotte Ann Smith,

Plaintiff,

vs.

Bank of America, N.A., as Successor by
Merger [to] LaSalle Bank N.A. as
Trustee for Certificate Holder[s] of
EMC Mortgage Corporation, Loan Trust
2005-A Mortgage Loan Pass-Through
Certificates, Series 2005-A, EMC
Mortgage Corporation, and Parent
Companies, The Bear Stearns
Companies, LLC and JP Morgan Chase
& Companies, Guardian Fidelity
Mortgage Inc., Guardian President and
CEO Howard H. Wright, Jr., Guardian
Assistant Manager Stacy Youngblood,
Guardian Chairman of the Board John
Good, Guardian Member
Owners/Shareholder[s]/Stockholders,

Defendants.

C/A No.: 0:11-3251-MBS-SVH


REPORT AND RECOMMENDATION

Plaintiff, proceeding pro se, brought this action in South Carolina state court on November 16, 2011. [Entry #1-1]. Defendants removed the case to this court on November 30, 2011. [Entry #1]. Defendants (1) Bank of America, N.A., as Successor by Merger to LaSalle Bank National Association as Trustee for Certificate Holders of EMC Mortgage Loan Trust 2005-A Mortgage Loan Pass-Through Certificates, Series 2005-A, (2) EMC Mortgage Corporation, (3) The Bear Stearns Companies, LLC, and (4) JP Morgan Chase & Co. (collectively "Moving Defendants") filed a motion to dismiss, for judgment on the

pleadings, and for summary judgment on May 17, 2012. [Entry #40]. As Plaintiff is proceeding pro se, the court entered an order on May 18, 2012, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising her of the importance of Moving Defendants' motion and of the need for her to file an adequate response. [Entry #41]. Plaintiff was specifically advised that if she failed to respond adequately, Moving Defendants' motion may be granted, thereby ending Plaintiff's claims against them in this case. Notwithstanding the specific warning and instructions set forth in the court's *Roseboro* order, Plaintiff has failed to respond to the motion.

On June 22, 2012, the court ordered Plaintiff to advise whether she wished to continue with the case by July 6, 2012. [Entry #58]. Plaintiff has filed no response. As such, it appears to the court that she does not oppose the motion and wishes to abandon this action. Based on the foregoing, the undersigned recommends this action be dismissed with prejudice for failure to prosecute. *See Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b).¹

IT IS SO RECOMMENDED.



July 9, 2012
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

¹ Defendants Guardian Fidelity Mortgage Inc., Guardian President and CEO Howard H. Wright, Jr., Guardian Assistant Manager Stacy Youngblood, Guardian Chairman of the Board John Good, Guardian Member Owners/Shareholder[s]/Stockholders have filed a motion to dismiss that is not yet ripe. [Entry #46]. Given Plaintiff's failure to respond to the court's direct order, it appears that Plaintiff does not plan to prosecute her case against these defendants and their dismissal is included in this recommendation.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).